

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

(X) Bellamy

JUN 28 2001

OFFICE OF
MANAGING DIRECTOR

Mr. Michael Zwerling
President
Zwerling Broadcasting System, Ltd.
2300 Portola Drive
Santa Cruz, CA 95062

RE: Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA): Failure to Pay Regulatory Fee and Late Payment Penalties, KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 00000CDMC-99-034.

Dear Mr. Zwerling:

We reviewed your request dated March 28, 2000 that the Commission waive or reduce the regulatory fee for radio station KSCO-AM (Santa Cruz, CA) for fiscal year (FY) 1999, and that the Commission waive the penalty assessed but not paid for KSCO-AM and KOMY-AM (La Selva Beach, CA). For the reasons stated below, we deny all aspects of your request for waiver of the required regulatory fees and all other stated forms of relief. Furthermore, this letter notifies you that you owe the United States \$5,343.75.

We wrote two letters on March 15 and 16, 2000 requesting that you pay the regulatory fees due for fiscal year (FY) 1999 and the assessed penalties that were due for radio stations KOMY-AM and KSCO-AM. Our letters stated that within 20 days you were required to either pay the fees and penalties or provide proof of the payment. You did not respond as requested, but instead on March 28, 2000, you requested a waiver of the fee due on radio station KSCO, and you broadly asserted that both stations were experiencing financial difficulties. We are dismissing your request because you remain delinquent in paying the FY 1999 fees and the associated penalties. Moreover, even if you had paid the fees and penalties, you failed to provide the proper base for establishing financial hardship or other relief. Our reasoning is provided below.

Your request for relief based on hardship does not provide any evidence of financial hardship for FY 1999. In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus even if a station loses money, any funds paid to principals, or deductions taken for depreciation or similar items are considered funds available to pay fees. You have not provided such showing for either station. Moreover, you did not demonstrate that paying the regulatory fee would affect the ability of the station to maintain service to the public. Finally, you did not demonstrate how waiver of the fees in this case overrides the public's interest to collect the fees.

We also deny your request that the Commission waive the late penalties because the penalties are required by statute and you have not shown that the fees were paid on a timely basis. Congress mandated that we impose penalties on late paid fees. 47 U.S.C. §159(c). The Commission's implementing rule provides: "Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner." 47 CFR §1.1164.

Interest starts to accrue on this debt from the date of this letter, and if the debt remains unpaid for more than 90 days, we are required to add a penalty of 6 percent per year of the unpaid amount. 31 U.S.C. §3717. If we have to initiate collection effort to obtain the amount owed, we will charge you the accompanying administrative costs. You may avoid this additional interest, the additional penalties, and other administrative charges, if you pay the full amount within 30 days of the date of this letter accompanied with the required remittance form.

If this debt is not paid, we may transfer this debt to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or apply other administrative sanctions. 47 CFR §§1.1161; 1.1164; 1.1940. Any payment received more than 30 days after the date of this letter will be subject to interest, and you may incur additional penalties and administrative costs. Your payment of \$5,343.75 for FY 1999 regulatory fees for KSCO-AM and KOMY-AM, and associated penalties, is due now.

If you have any questions concerning this letter, you may write me at the Commission or call the Revenue and Receivables Operation Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Reger", written over a horizontal line.

Mark Reger
Chief Financial Officer

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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MANAGING DIRECTOR

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86-285

Mr. Michael Zwerling
President
Zwerling Broadcasting System, Ltd.
2300 Portola Drive
Santa Cruz, CA 95062

RE: Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA) and
KOMY-AM (La Selva Beach, CA), Fee Control Number 0009268835858007.

Dear Mr. Zwerling:

We reviewed your email request on September 18, 2000 that the Commission waive or reduce the regulatory fee of \$3,575.00 for radio station KSCO-AM (Santa Cruz, CA) and \$1,200.00 for KOMY-AM (La Selva Beach, CA) for fiscal year (FY) 2000. We note that you submitted the request on September 18, and that on September 21, 2000, you paid the regulatory fees that were due for FY 2000 for both radio stations. You, however, did not pay the delinquent fees and penalties for either station for FY 1999. Your failure to pay the delinquent fees and penalties affects our consideration of your request for a waiver or reduction of the FY 2000 regulatory fees. Moreover, you did not provide any documentation in support of your assertion that the station fees should be reduced or waived or that there is a valid basis to assert a discrepancy in the fee schedule for radio station KSCO-AM. For these reasons, which we explain in further detail below, we deny all aspects of your request for waiver of the required regulatory fees and all other stated forms of relief.

We wrote two letters on March 15 and 16, 2000 requesting that you pay the regulatory fees due for fiscal year (FY) 1999 and the assessed penalties due for radio stations KOMY-AM and KSCO-AM. Our letters stated that within 20 days you were required to either pay the fees and penalties or provide proof of the payment. Your response did not include the fees and penalties, or the remittance form, or evidence that the fees were paid on time. Instead, you requested a waiver of the fee due on radio station KSCO. Pursuant to 47 U.S.C. §159(c)(2), which provides that the Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty, we are dismissing your request because you remain delinquent in paying the regulatory fees for FY 1999 and the associated penalties. Even if you had paid the fees and penalties, however, you failed to provide the proper base for establishing financial hardship or other relief. Our reasoning is provided below.

Your request for relief based on hardship does not provide any evidence of financial hardship for FY 2000. In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus even if a

station loses money, any funds paid to principals, or deductions taken for depreciation or similar items are considered funds available to pay fees. Moreover, you must demonstrate that paying the regulatory fee would affect the ability of the station to maintain service to the public. Finally, you must demonstrate how waiver of the fees in this case overrides the public's interest to collect the fees. Your email request fails to provide any of this required documentation or information for either station. Consequently, we will not refund any part of your payment of the FY 2000 regulatory fees.

If you have any questions concerning this letter, you may write me at the Commission or call the Revenue and Receivables Operation Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Reger', with a stylized flourish at the end.

Mark Reger
Chief Financial Officer